

STATE OF MICHIGAN
IN THE SUPREME COURT

(ON APPEAL FROM THE MICHIGAN COURT OF APPEALS)

LEON V. BONNER and MARILYN E. BONNER,

Supreme Court No. 146520

Plaintiffs-Appellees,

Court of Appeals No. 302677

v

Livingston County Circuit
Court No. 09-24680-CZ

CITY OF BRIGHTON,

Defendant-Appellant.

CITY OF BRIGHTON,

Plaintiff-Appellant,

v

Consolidated with
Livingston County Circuit
Court No. 09-24900-CZ

LEON V. BONNER and MARILYN E. BONNER,

Defendants-Appellees.

BRIEF *AMICUS CURIAE* OF THE MICHIGAN MUNICIPAL LEAGUE
PROOF OF SERVICE

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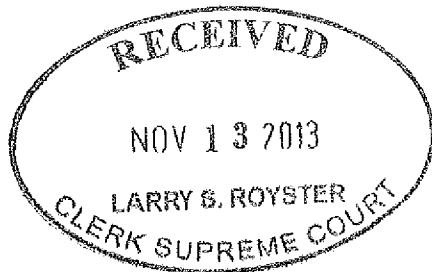


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STATEMENT OF THE BASIS OF JURISDICTION

On July 1, 2013, this Court entered an order granting the City of Brighton's application for leave to appeal. Therefore, this Court has jurisdiction pursuant to MCR 7.301(A)(2).

STATEMENT OF THE QUESTIONS PRESENTED

I.

Is Brighton Code of Ordinances § 18-59 facially constitutional where it bears a reasonable relation to a permissible legislative objective and where factual circumstances exist under which the ordinance is valid, and therefore, it does not violate substantive due process?

Plaintiffs-Appellees answer, "no."

Defendant-Appellant answers, "yes."

Amicus Curiae Michigan Municipal League answers, "yes."

The Livingston County Circuit Court presumably answers, "no."

The Court of Appeals presumably answers, "no."

II.

Is Brighton Code of Ordinances § 18-59 facially constitutional where it provides for notice and an opportunity to be heard, and therefore, does not violate procedural due process?

Plaintiffs-Appellees answer, "no."

Defendant-Appellant answers, "yes."

Amicus Curiae Michigan Municipal League answers, "yes."

The Court of Appeals presumably answers, "no."

STATEMENT OF INTEREST

Pursuant to MCR 7.306(D), amicus curiae Michigan Municipal League submits this brief in support of Defendant-Appellant, City of Brighton, which has been granted leave to appeal the Court of Appeals' December 4, 2012, decision. This decision affirmed the Livingston County Circuit Court's order of February 1, 2011, holding that the City's Code of Ordinances § 18-59 was unconstitutional on its face, violating the substantive due process rights of Plaintiffs-Appellees, Leon and Marilyn Bonner ("the Bonners"). The Court of Appeals agreed that the ordinance, which allows for demolition of a structure deemed unsafe when the costs of repairs exceeds 100 percent of the structure's true cash value, violated substantive due process because it did not allow for an absolute right of repair. The Court further held that it violated procedural due process. The Michigan Municipal League submits that the Court of Appeals decision interferes with a municipality's right to protect the health safety and welfare of the public and should be reversed.

The Michigan Municipal League is a non-profit Michigan corporation whose purpose is the improvement of municipal government and administration through cooperative effort. Its membership is comprised of hundreds of Michigan cities and villages, many of which are also members of the Michigan Municipal League Legal Defense Fund. The Michigan Municipal League operates the Legal Defense Fund

through a board of directors¹, which is broadly representative of its members. The purpose of the Legal Defense Fund is to represent the member cities and villages in litigation of statewide significance.

The Michigan Municipal League's interest in this case is to preserve the ability of municipalities to enact ordinances to address serious issues affecting the health, safety, and welfare of the public. The Brighton ordinance provides an efficient and effective method for removing unsafe structures within its jurisdiction. It allows for demolition of such structures in situations where it has been determined that the cost of repairs is greater than the true cash value of the structure. Such demolition is discretionary, however, and there is an additional right to an appeal. As noted in the City's brief on appeal, its ordinance is similar to Section 115.1 of the Michigan Building Code and other similar ordinances across the state. (City's Brief on Appeal, pp 24-25; City's Apx 237a; **Exhibit A**, Ordinances). The Court of Appeals majority nevertheless held that the ordinance violates both substantive and procedural due process because it does not

¹ The 2012-2013 Board of Directors of the Legal Defense Fund are: Randall L. Brown, Chair, City Attorney, Portage; Lori Grigg Bluhm, Vice-Chair, City Attorney, Troy; Stephen K. Postema, Immediate Past-Chair, City Attorney, Ann Arbor; Eric D. Williams, City Attorney, Big Rapids; Clyde J. Robinson, City Attorney, Kalamazoo; James O. Branson, City Attorney, Midland; James J. Murray, City Attorney, Boyne City and Petoskey; Robert J. Jamo, City Attorney, Menominee; John C. Schrier, City Attorney, Muskegon; Thomas R. Schultz, City Attorney, Farmington and Novi; David Lossing, Mayor, Linden, Michigan Municipal League President; Daniel P. Gilmartin, Executive Director and CEO of Michigan Municipal League; and William C. Mathewson, General Counsel, Michigan Municipal League, and Fund Administrator.

contain an absolute right of repair – a right that heretofore has not existed under Michigan law.

The majority opinion recognizes that “a permissible legislative objective of the city under police powers is to protect citizens from unsafe and dangerous structures and that one mechanism for advancing that objective can entail demolishing or razing unsafe structures,” and further concedes that the Brighton ordinance provides notice and an opportunity to be heard. But the Court of Appeals majority nevertheless concluded that the ordinance violates both substantive and procedural due process because it does not allow for an absolute right of repair. (Majority Opinion, pp 11-12, City’s Apx 199a-200a).

The majority opinion fails to afford the city the proper deference to its legislative choices and unduly restricts a municipality’s ability to protect its residents. Ordinances are reviewed under the rational basis test, under which a zoning ordinance is presumed to be reasonable and the burden is upon the person challenging such an ordinance to overcome this presumption by proving that there is no reasonable governmental interest being advanced by the zoning ordinance. *Kyser v Kasson Twp*, 486 Mich 514, 521; 786 NW2d 543 (2010). The Court does “not consider the wisdom of the Legislature’s choice, or whether that choice was made with mathematical nicety, or whether it is most narrowly drawn to obtain its objective, or whether it may be inequitable when put into practice.” *People v Derror*, 475 Mich 316, 340; 715 NW2d 822 (2006), *overruled on other*

grounds by *People v Feezel*, 486 Mich 184 (2010). Thus, the Court does “not consider the effects of the statute or its consequences, only its purpose.” (*Id.*).

The majority opinion ignores the fact that, as the City has argued in its brief on appeal, the structures affected by the ordinance are those that are in an unsafe state due solely to the actions of their owners. Furthermore, ample evidence supports the assertion that abandoned houses and other unsafe structures have reached epidemic proportions nationwide. These abandoned buildings result in increased crime, a severe strain on municipal resources, and a threat to public health, safety, and welfare.

A report from the Bureau of Justice Assistance, U.S. Department of Justice, details the incidence of crimes related to abandoned buildings:

- A study using data from Chicago found that for every one percent increase in the rate of foreclosures, violent crime increases by 2.33 percent.
- Another study linked rising crime in parts of New York to foreclosures.
- Nearly 40 percent of law enforcement agencies surveyed in 2008 said that home foreclosures had either fueled a rise in crime around abandoned houses in their jurisdictions or had hurt law enforcement budgets (through a loss in tax revenue).
- A study in Austin, Texas, concluded that crime rates on blocks with open abandoned buildings were twice as high as rates on similar blocks without open buildings.
- A study in Charlotte, North Carolina, found that there were increases in both property and violent crime in neighborhoods that had high rates of foreclosure. [Robert V. Wolf, Bureau of Justice Assistance, U.S. Department of Justice, “A full response to an empty

house: Public safety strategies for addressing mortgage fraud and the foreclosure crisis," p 8. Available at http://www.courtinnovation.org/sites/default/files/foreclosure_crisis.pdf (last visited November 4, 2013).]

In addition to contributing to an increase in crime, a study in Dallas showed that about 12,000 fires annually in vacant or abandoned properties resulted in approximately 6,000 injuries to first responders. (*Id.*, p 9). Moreover, unsafe, abandoned houses affect property values and strain budgets. For example, in Flint, Michigan: property within 500 feet of a vacant and abandoned structure lost 2.26% of its total value. Diana A. Silva, Land Banking as a Tool for the Economic Redevelopment of Older Industrial Cities, 3 Drexel L Rev 607, 610-611 (2011). Abandoned properties "also present significant costs to the city itself in lost taxes, code enforcement, and cleanup." (*Id.* at 611). Detroit spends approximately \$800,000 per year on vacant lot cleanup. (*Id.*).

To combat these problems, local governments have established building, housing, and property maintenance codes that set forth standards for the appearance and safety of properties. (Vacant Properties: Growing Number Increases Communities' Costs and Challenges, p 27. Available at <http://www.gao.gov/assets/590/586089.pdf> (last visited November 4, 2013)). These "uniform building, fire, and property maintenance codes that have been implemented across the country contain special provisions for the maintenance of dangerous buildings— those that pose threats to the public health, safety, and welfare, such as structural insecurity." (*Id.*). As a result, "[c]ode enforcement departments can typically issue fines for code violations or take

actions themselves, such as making repairs, removing debris, covering windows and doors to secure properties, or even demolishing them, if needed, and bill the responsible party for the costs incurred." (*Id.*, pp 27-28 (emphasis added)).

The lower court decisions invade a municipality's right to make important policy choices regarding how best to address a major public health and safety hazard – unsafe structures. The policy choices embodied in a particular ordinance, such as BCO § 18-59, fall within the long-recognized powers of a city, absent a constitutional restraint. The lower courts relied on the Fourteenth Amendment of the United States Constitution and Const 1963, art 1, § 17 to strike down the City's ordinance. This ruling was inconsistent with a proper understanding of due process and threatens vital government interests. The majority's decision, if allowed to stand, will prevent municipalities from effectively and efficiently protecting the public from the danger of unsafe and abandoned structures.

STATEMENT OF FACTS

Amicus Curiae relies upon the statements of facts set forth in and the appendix attached to the City of Brighton's brief on appeal.

STANDARD OF REVIEW

A trial court's decision on a motion for summary disposition is reviewed de novo on appeal. *Driver v Naini*, 490 Mich 239, 246; 802 NW2d 311 (2011). Likewise, this Court reviews de novo matters of statutory construction, including the interpretation of ordinances. *Soupal v Shady View, Inc*, 469 Mich 458, 462; 672 NW2d 171 (2003).

ARGUMENT I

Brighton Code Of Ordinances § 18-59 Is Facially Constitutional And Does Not Violate Substantive Due Process Because The Ordinance Bears A Reasonable Relation To A Permissible Legislative Objective And Because Factual Circumstances Exist Under Which The Ordinance Is Valid.

- A. The test for a facial due process challenge requires a litigant to show that the ordinance is unreasonable and no set factual circumstances exist under which the ordinance is valid.

The Fourteenth Amendment to the United States Constitution and Const 1963, art 1, § 17 guarantee that no state shall deprive any person of "life, liberty or property, without due process of law." "Textually, only procedural due process is guaranteed by the Fourteenth Amendment; however, under the aegis of substantive due process, individual liberty interests likewise have been protected against 'certain government actions regardless of the fairness of the procedures used to implement them.'" *People v Sierb*, 456 Mich 519, 522-23; 581 NW2d 219 (1998), quoting *Collins v City of Harker Heights*, 503 US 115, 125; 112 S Ct 1061; 117 LEd2d 261 (1992). "The underlying purpose of substantive due process is to secure the individual from the arbitrary exercise of governmental power." (*Id.* at 523).

The issue before this Court is whether Brighton Code of Ordinances § 18-59 is facially unconstitutional. A facial challenge attacks the very existence or enactment of the ordinance. *Paragon Properties Co v City of Novi*, 452 Mich 568, 576; 550 NW2d 772 (1996). In a facial challenge, this Court must determine "whether the legislation bears a

reasonable relation to a permissible legislative objective.” *Phillips v Mirac, Inc*, 470 Mich 415, 436; 685 NW2d 174 (2004), quoting *Detroit v Qualls*, 434 Mich 340, 366-367 n 49; 454 NW2d 374 (1990); *Trentadue v Buckler Automatic Lawn Sprinkler Co*, 479 Mich 378, 405; 738 NW2d 664 (2007). Under this rational basis test, the Court does “not consider the wisdom of the Legislature’s choice, or whether that choice was made with mathematical nicety, or whether it is most narrowly drawn to obtain its objective, or whether it may be inequitable when put into practice.” *Derror*, 475 Mich at 340. The Court does “not consider the effects of the statute or its consequences, only its purpose.” (*Id.*). ““That the accommodation struck may have profound and far-reaching consequences ... provides all the more reason for this Court to defer to the congressional judgment unless it is demonstrably arbitrary or irrational.”” *Phillips v Mirac, Inc*, 470 Mich 415, 434-35; 685 NW2d 174 (2004), quoting *Duke Power Co v Carolina Environmental Study Group*, 438 US 59, 83-84; 98 S Ct 2620; 57 L E d 2d 595 (1978). Importantly, “[a] classification reviewed on this basis passes constitutional muster if the legislative judgment is supported by any set of facts, either known or which could reasonably be assumed, even if such facts may be debatable.” *Crego v Coleman*, 463 Mich 248, 259-260; 615 NW2d 218 (2000).

Further, “[a]s long as the Legislature’s objective is legitimate, the means that it chooses to obtain that objective is not rendered unconstitutional merely because it may be overinclusive.” *Derror*, 475 Mich at 340. “Every reasonable presumption or

intendment must be indulged in favor of the validity of an act, and it is only when invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution that a court will refuse to sustain its validity.” *Phillips*, 470 Mich at 422-23, quoting *Cady v Detroit*, 289 Mich 499, 505; 286 NW 805 (1939).

With respect to zoning in particular, this Court has recognized zoning as a reasonable exercise of the police power that protects the integrity of a community's current structure and controls a community's future development. *Kyser v Twp*, 486 Mich 514, 520; 786 NW2d 543 (2010). However, the local power to zone is not absolute. (*Id.*). A zoning ordinance is presumed to be reasonable and the burden is upon the person challenging such an ordinance to overcome this presumption by proving that there is no reasonable governmental interest being advanced by the zoning ordinance. (*Id.* at 521). The challenger must demonstrate that the ordinance is an arbitrary and unreasonable restriction upon the owner's use of his property. (*Id.*). Accordingly, “[u]nder this standard, a zoning ordinance will be struck down only if it constitutes an arbitrary fiat, a whimsical ipse dixit, and there is no room for a legitimate difference of opinion concerning its unreasonableness.” (*Id.* at 521-522) (internal citations and punctuation omitted). See also *Lingle v Chevron USA Inc*, 544 US 528, 541; 125 S Ct 2074, 2083; 161 L Ed 2d 876 (2005), citing *Village of Euclid v Ambler Realty Co*, 272 US 365; 47 S Ct 114; 71 L Ed 303 (1926) (a municipal zoning ordinance survives a substantive due

process challenge so long as it is not clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare); *Crego*, 463 Mich at 259, quoting *Smith v Employment Security Comm*, 410 Mich 231, 271; 301 NW2d 285 (1981) (To prevail under this highly deferential standard of review, a challenger must show that the legislation is 'arbitrary and wholly unrelated in a rational way to the objective of the statute.'").

In this case, the ordinance at issue states as follows:

Whenever the city manager, or his designee, has determined that a structure is unsafe and has determined that the cost of the repairs would exceed 100 percent of the true cash value of the structure as reflected on the city assessment tax rolls in effect prior to the building becoming an unsafe structure, such repairs shall be presumed unreasonable and it shall be presumed for the purpose of this article that such structure is a public nuisance which may be ordered demolished without option on the part of the owner to repair. This section is not meant to apply to those situations where a structure is unsafe as a result of an event beyond the control of the owner, such as fire, windstorm, tornado, flood or other Act of God. If a structure has become unsafe because of an event beyond the control of the owner, the owner shall be given by the city manager, or his designee, reasonable time within which to make repairs and the structure shall not be ordered demolished without option on the part of the owner to repair. If the owner does not make the repairs within the designated time period, then the structure may be ordered demolished without option on the part of the owner to repair. The cost of demolishing the structure shall be a lien against the real property and shall be reported to the city assessor, who shall assess the costs against the property on which the structure is located. [BCO § 18-59; City's Apx 231a (emphasis added).]

An additional section of the code of ordinances provides for the right of appeal:

An owner of a structure determined to be unsafe may appeal the decision to the city council. The appeal shall be in writing and shall state the basis for the appeal.... The owner or his agent shall have an opportunity to be heard by the city council at a regularly scheduled council meeting. The city council may affirm, modify, or reverse all or part of the determination of the city manager, or his designee. [BCO § 18-61 (emphasis added).]

Thus, in order to be facially invalid, the Bonners were required to prove that these ordinances are an arbitrary and unreasonable restriction upon their use of their property, *Kyser*, 486 Mich at 521-522, and that no set of facts exist under which they could be valid, *Crego*, 463 Mich at 259-260. See also 37712, *Inc v Ohio Dep't of Liquor Control*, 113 F3d 614, 620 (CA 6 1997) ("[I]f any conceivable legitimate governmental interest supports the contested ordinance, that measure is not 'arbitrary and capricious' and hence cannot offend substantive due process norms").

B. Brighton Code of Ordinances § 18-59, which addresses unsafe structures, bears a reasonable relation to the permissible legislative objective of protecting the health, safety, and welfare of the public.

Reasonableness is the test of an ordinance's validity. *Kropf v City of Sterling Hts*, 391 Mich 139, 157; 215 NW2d 179 (1974). It is inherently reasonable for a municipality to have a policy for eliminating abandoned and unsafe buildings, especially given the nationwide epidemic of such structures, which result in crime, decreased property values, a severe strain on municipal resources, and danger to the general public. As discussed above, abandoned buildings attract crime:

- Nearly 40 percent of law enforcement agencies surveyed in 2008 said that home foreclosures had either fueled a rise in crime around abandoned houses in their jurisdictions or had hurt law enforcement budgets (through a loss in tax revenue).
- A study in Austin, Texas, concluded that crime rates on blocks with open abandoned buildings were twice as high as rates on similar blocks without open buildings.
- A study in Charlotte, North Carolina, found that there were increases in both property and violent crime in neighborhoods that had high rates of foreclosure. [Wolf, "A full response to an empty house," p 8].

In addition to crime, a study in Dallas showed that about 12,000 fires annually in vacant or abandoned properties resulted in approximately 6,000 injuries to first responders. (*Id.*, p 9).

Moreover, unsafe, abandoned houses affect property values and strain budgets.

A study in Philadelphia discovered that properties located within 150 feet of a single abandoned property lost an average of \$7,627 in value; properties on the same block lost an average of \$6,500 in value. In Chicago, a similar effect was found--a single foreclosed property on a block reduced the property value of the 13 homes located within 150 feet of the affected property. A similar trend arose in Flint, Michigan: property within 500 feet of a vacant and abandoned structure lost 2.26% of its total value. [Diana A. Silva, *Land Banking as a Tool for the Economic Redevelopment of Older Industrial Cities*, 3 Drexel L Rev 607, 610-611 (2011).]

Abandoned properties "also present significant costs to the city itself in lost taxes, code enforcement, and cleanup." (*Id.* at 611). "Detroit spends approximately \$800,000 per year on vacant lot cleanup; Philadelphia spends over \$1.8 million In Ohio, a 2008

study of eight cities found that vacant and abandoned properties cost local governments \$15 million annually in city service expenses and cost the cities over \$49 million in lost taxes." (*Id.* at 611).

Likewise, in Cleveland, according to the 2000 United States census, 25,218 housing units were counted as vacant; in the 2010 census that number rose to 40,046 W. Dennis Keating and Kermit J. Lind, *Responding to the Mortgage Crisis: Three Cleveland Examples*, 44 *Urb Law* 1, 4 (2012). "A significant number of those structures in 2010 were abandoned . . . and blighted due to neglect and vandalism." (*Id.*, p 5). As a result, the City of Cleveland was forced to "greatly increase its spending on maintaining these abandoned structures in lieu of responsible absentee owners and in the case of thousands to eventually demolish them as nuisance properties." (*Id.*). Similarly, according to the 2000 Census, "there were 18,742 vacant properties in [Pittsburgh] at the time, which was 11.5 percent of all housing units. Though the City's Bureau of Building Inspection demolishes as many blighted properties as it is able, it can only make a small dent in the issue, given the City's limited funds." Darren M. Belajac, *The Pennsylvania Legislature Takes a Significant, Though Insufficient, Step Toward Addressing Blight and Tax Delinquency: House Bill 712, The Land Bank Act*, 49 *Duq L Rev* 79, 80 (2011).

The story is the same in Indianapolis, where a 2003 survey showed 7,913 abandoned properties. Kory T. Bell, *One Nail at a Time: Building Deconstruction Law as Tool to Demolish Abandoned Housing Problems*, 45 *Ind L Rev* 547, 548 (2012). "In

many other Rust Belt cities, local leaders have long struggled to rid city blocks of abandoned houses that plague housing stocks by the thousands.” (*Id.*). “Cities and towns are finding that taxpayers ultimately must bear the external costs of maintaining abandoned properties, but also must contend with less of a property tax base to do so as the city deteriorates.” (*Id.*, p 549). “[A]bandonment increases municipal costs of services and maintenance, aggravates neighborhood decay, decreases property values, increases crime, and creates hazards to health and safety.” (*Id.*, p 550). The 2010 Census counted 660,000 vacant homes in Michigan. “Census 2010-Nobody home. Michigan's vacant housing soars.” Available at http://www.mlive.com/news/index.ssf/2011/07/census_2010_nobody_home_michig.htm. In Detroit, the city government must address the problems created by 10,000 abandoned homes and buildings. James H. Carr and Katherine Lucas-Smith, Five Realities About the Current Financial and Economic Crisis, 44 Suffolk U L Rev 7, 25-26 (2011).

To combat this epidemic of abandoned and unsafe structures, municipalities across the country, like the city of Brighton, have enacted uniform building, fire, and property maintenance codes that “contain special provisions for the maintenance of dangerous buildings — those that pose threats to the public health, safety, and welfare, such as structural insecurity,” and which allow cities to take action themselves, including making repairs or demolition. (Vacant Properties, p 27). See also **Exhibit A**.

Courts have long recognized this interest in protecting the health and safety of the public as sufficient to meet the rational basis standard. "All property is held subject to the right of the government to regulate its use in the exercise of the police power so that it shall not be injurious to the rights of the community or so that it may promote its health, morals, safety and welfare." *Austin v Older*, 283 Mich 667, 677; 278 NW 727 (1938). For example, at issue in *McKenzie v City of Chicago*, 118 F3d 552 (CA 7 1997), was a Chicago fast-track demolition ordinance enacted pursuant to a state law which authorized municipalities to "demolish, repair, or enclose" residential buildings, one or two stories in height, that are "open and vacant" and "an immediate and continuing hazard to the community." As the 7th Circuit explained, "[i]f a rational person could believe that the law has certain benefits, then the court must assume that it has those benefits. Enforcement of legislation is not contingent on convincing the judge of its value." (*Id.* at 556). Moreover, "[a] legislative decision 'is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data.'" (*Id.* at 556-57, quoting *FCC v Beach Communications, Inc*, 508 US 307, 315; 113 S Ct 2096; 124 L Ed 2d 211 (1993)). The court determined that a rational person could believe that Chicago's ordinance "facilitates the suppression of crime. It also may curtail risks of fire, which can spread to adjacent buildings, and the hazards run-down and open premises pose to children, who may enter and injure themselves." (*Id.* at 557). See also *Hoeck v City of Portland*, 57 F3d 781 (CA 9 1995) (City-ordered demolition of

partially renovated but vacant building without paying compensation to owner did not violate owner's substantive due process rights; financing for renovation project had been withdrawn and building remained vacant for more than three years, and city could rationally conclude that there was greater danger to public from unoccupied substandard building than from occupied one.).

Indeed, “[r]azing nuisances, like killing diseased livestock and burning infected plants, is a time-honored use of a state’s police power, accepted by even the harshest critics of governmental regulation.” *McKenzie*, 118 F3d at 557-558, citing *Miller v Schoene*, 276 US 272; 48 S Ct 246; 72 L Ed 568 (1928). See also *Duplantis v Bonvillain*, 675 F Supp 331, 335 (ED La 1987) (“It is beyond dispute that a building code providing for the condemnation of unsafe and unsanitary structures is substantially related to the public health, safety, morals and general welfare.”). Thus, BCO § 18-59, which provides for the demolition of unsafe structures – which were rendered unsafe by the failure of their owners to take action and which cost more to repair than the true cash value – is reasonably related to the permissible legislative objective of protecting the health and safety of the public.

The trial court and Court of Appeals found that BCO § 18-59 violates due process because it lacks an absolute right to repair. The Court of Appeals asserted that “the ordinance’s exclusion of a repair option when city officials deem repairs unreasonable on the basis of expense the owner is able and willing to incur bears no reasonable

relationship to the legislative objective. . . . [D]emolition does not advance the objective of abating nuisances and protecting citizens to a greater degree than repairs, even unreasonable ones.” (Majority Opinion, p 1, City’s Apx 289a). But this Court has recognized that

While it is within the province of the courts to pass upon the validity of statutes and ordinances, courts may not legislate nor undertake to compel legislative bodies to do so one way or another. . . . The ultimate power is vested in the council, and its good faith in acting for the public welfare cannot be questioned by the judicial branch of government. [*Robinson v City of Bloomfield Hills*, 350 Mich 425, 431-32; 86 NW2d 166 (1957).]

See also *Ferguson v Skrupa*, 372 US 726, 730; 83 S Ct 1028; 10 L Ed 2d 93 (1963) (“The doctrine that ... due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely ... has long since been discarded. We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws.”). Accordingly, the Court of Appeals’ misapplication of the rational basis test equates to an improper policy decision.

Moreover, the ordinance contains only the presumption that if repairs cost more than 100 percent of the value of the structure, the repairs are unreasonable because the average person will not attempt such an undertaking. Even the majority recognized that the presumption in BCO § 18-59 is not irrebuttable. (Majority Opinion, p 10, City’s Apx 198a). But the majority nevertheless concludes:

in order to overcome the presumption that allows the city to order demolition absent an option to repair, the property owner must show that making repairs is reasonable. We find this aspect of the ordinance to be constitutionally problematic and in violation of due process. The appeal section, BCO § 18-61, does not provide its own or a different standard; therefore, the city council in addressing an appeal would be constrained to also apply the reasonableness standard that governs BCO § 18-59. Such a standard prevents a property owner who has the desire and ability to make the necessary repairs in a timely fashion to render a structure safe, even when the cost of repairs exceeds the city-determined true cash value of the structure before its becoming unsafe, from doing so because the ordinance deems such repairs unreasonable. [*Id.* (emphasis added).]

The plain language of the ordinances does not restrict the property owner to showing the reasonableness of repairs with respect to cost. Indeed, one can conceive of a scenario where a property owner could provide legitimate reasons why repairs had not previously been made or show that he or she had the desire and financial means to repair the property regardless. The ordinances give the City Council the authority to override demolition without restricting the decision to a determination of reasonableness with respect to costs. In a facial challenge such as this, it is presumed that the council would consider the request.

C. Factual circumstances exist under which the ordinance is valid.

The Bonners have brought a facial challenge to the ordinance. As noted, in such a situation, legislation does not run afoul of due process where “the legislative judgment is supported by any set of facts, either known or which could reasonably be assumed, even if such facts may be debatable.” *Crego*, 463 Mich at 259-60. The Court of

Appeals majority in fact recognized that there are certain situations that call for razing a structure without giving an opportunity to repair -- thus plainly demonstrating that the ordinance does not violate due process under the rational basis standard:

We recognize that there may occasionally be unique situations in which repair efforts cannot be allowed despite a willingness by the property owner to make repairs, such as where repairs necessary to meet code cannot be designed or cannot be accomplished in a safe or timely manner. There may also be emergency situations, see BCO § 18-56, where immediate destruction is necessary to avoid an imminent danger and repairs are not feasible." [Majority Opinion, p 12 n 14, City's Apx 202a].

The Court justifies its conclusions, however, by maintaining that, "the reasonableness standard in BCO § 18-59 focuses on economic and financial reasonableness, considering that, the ordinance is predicated on examination of repair costs and property valuations." (*Id.*). Again, as discussed above, the plain language of the ordinance gives the City Council the authority to override demolition without restricting it to a determination of reasonableness with respect to costs of repairs. This represents a legislative balancing of potentially conflicting concerns. On the one hand, abandoned or empty structures pose a grave danger and many times, the owners are not in a position to perform timely repairs or do not respond to the notice of the problem. The municipality ought not be forced to wait; the danger is present and requires swift measures. On the other hand, property owners in some circumstances may wish to perform repairs even though the cost to do so exceeds the value of the building once it is repaired. By allowing the City Council to override the default presumption, the

ordinance seeks to equitably balance those concerns by allowing quick action that would, in most cases, be the correct and desired outcome of both the public and the property owners, and would, in rare and different circumstances, permit an exception after the property owners rebut the presumption and satisfy the City Council that they intend to and are able to remedy the danger in a timely manner. This legislative scheme comports with constitutional strictures and thus is properly upheld.

ARGUMENT II

Brighton Code Of Ordinances § 18-59 Does Not Violate Procedural Due Process On Its Face Because The Ordinance Provides For Notice And An Opportunity To Be Heard.

Due process applies to any adjudication of important rights. *In re Brock*, 442 Mich 101, 110; 499 NW2d 752 (1993). Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment. (*Id.*, quoting *In re LaFlure*, 48 Mich App 377, 385; 210 NW2d 482 (1973)). The concept is flexible and calls for such procedural protections as the particular situation demands. (*Id.* at 111). Procedural due process requires that an individual be given notice and an opportunity to be heard in a meaningful manner by an impartial decision maker before being subjected to a deprivation of life, liberty, or property. *Mudge v Macomb County*, 458 Mich 87, 101; 580 NW2d 845 (1998); *Reed v Reed*, 265 Mich App 131, 159; 693 NW2d 825, 843 (2005). Due process requires fundamental fairness and requires the consideration of three factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would

entail. *In re Brock*, 442 Mich at 111, citing *Mathews v Eldridge*, 424 US 319, 335; 96 S Ct 893; 47 L Ed 2d 18 (1976).

In this case, however, the majority opinion does not dispute the adequacy of notice and opportunity to be heard provided for in the ordinances, nor does it question the impartiality of the decision maker. Instead, the majority appears to add an element to procedural due process, namely, that in addition to notice and an opportunity to be heard, plaintiffs must be afforded the right to repair, which, in the majority's view, would eliminate the risk of erroneous deprivation of a property interest. (Majority Opinion, pp 12-13, City's Apx 200a-201a). The majority's creation of a right to repair is a new right, however, entirely unsupported by any Michigan law. Rather, as Judge Murray explains in his dissent, the majority cites law from sister states that is either inapplicable or unpersuasive, because it is based on state constitutional provisions (Dissent, p 5, City's Apx 213a), or as the City noted in its brief, case law which did not address ordinances that contained a rebuttable presumption, as here. (City's Brief on Appeal, p 26). Moreover, this Court is not bound by cases from foreign jurisdictions, *People v Jamieson*, 436 Mich 61, 86; 461 NW2d 884, 894 (1990), and more importantly, Michigan courts resort to consideration of sister state case law only in the absence of any Michigan authority, *People v Kaslowski*, 239 Mich App 320, 327; 608 NW2d 539 (2000); *Osner v Boughner*, 180 Mich App 248, 269; 446 NW2d 873 (1989).

The majority has essentially held that the due process clause requires a right of repair. This right is elevated over and bars the use of any presumption that a structure would not typically be repaired if the cost exceeds the value – a presumption that is inherently reasonable. As provided above, under Michigan law, due process does not require more than notice and an opportunity to be heard before an impartial decision maker. Therefore, the ordinance does not violate procedural due process.

RELIEF

WHEREFORE, *amicus curiae* Michigan Municipal League respectfully requests that this Court reverse the Court of Appeals' December 4, 2012 decision and grant it such other relief as is warranted in law and equity.

PLUNKETT COONEY

By: 

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Dated: November 13, 2013

EXHIBIT A

ORDINANCE # 01-09

MIDDLE BRANCH TOWNSHIP

DANGEROUS BUILDING ORDINANCE

**THE TOWNSHIP OF MIDDLE BRANCH, OSCEOLA COUNTY, MICHIGAN,
HEREBY ORDAINS:**

Purpose of Ordinance:

An ordinance to secure the public peace, health, safety and welfare, and convenience of the residents and property owners of Middle Branch Township, Osceola County, Michigan, by the regulation of uncompleted, abandoned, dilapidated, or deteriorated buildings injurious to life or health, within said township; to provide penalties for the violation thereof, and to repeal all Ordinances and parts of Ordinances in conflict therewith.

I. Title of Ordinance:

This ordinance shall be known and cited as the Middle Branch Township Dangerous Building Ordinance.

II. Regulations

- A. No building or structure, whether now existing or hereafter erected, shall be left in a dangerous or hazardous condition by virtue of disrepair, depreciation, damage by fire, collapse, or act of God, or by virtue of any other cause, but shall be forthwith repaired or rehabilitated, and the dangerous and hazardous condition removed by the owner or occupant thereof, or in the alternative, torn down and removed, and any excavation there under filled to grade level.
- B. No building so damaged or destroyed to such an extent that the cost of repair and rehabilitation to place it in a safe, sound and sanitary condition exceeds 50% of the true cash value of the building, at the same time the repairs or rehabilitation are to be made, shall be repaired or rehabilitated unless it is made to comply in all respects with the provisions of the International Property Maintenance Code, 2006 Edition, governing such building.
- C. Any building so damaged or destroyed to such an extent that the cost of repair and rehabilitation to place it in a safe, sound and sanitary condition exceeds 50% of the true cash value at the time when the repairs or rehabilitation are to be made, shall be deemed unfit for human habitation

and shall be immediately vacated, and unless made to comply with all the provisions of the International Property Maintenance Code, 2006 Edition, as previously adopted by Middle Branch Township, shall be demolished and removed.

- D. Whenever it shall be certified by the building inspector or health officer, retained by the township, that a building is infected with contagious disease or it unfit for human habitation, or dangerous to life or health by reason of want of repair or of defects in the drainage, plumbing, lighting, ventilation or the construction of the same, or by reason of the existence on the premises of a nuisance likely to cause sickness among the occupants of said building, the building inspector or health officer may issue an order requiring all persons therein to vacate such building within the time specified, the building inspector or health officer may cause said dwelling to be vacated. Whenever the building inspector or health officer is satisfied that the danger from said building has ceased to exist or that it is fit for human habitation, he may revoke said order or may extend the time within which to comply with same.
- E. Whenever any building or premises or the plumbing, sewage, drainage, lighting, or ventilation thereof is, in the opinion of the building inspector or health officer, dangerous or detrimental to life or health, such officer may declare that the same to the extent he may specify, is a public nuisance, and may order the same to be removed abated, suspended, altered, or otherwise improved or purified, as the order shall specify.
- F. No mobile home, as defined by Michigan Statute, shall be placed in the Township if the mobile home is 10 years of age, or older, and less than \$15,000.00 in value, as determined by the township assessor.

III. Notice of Dangerous Building; Hearing

- A. **Notice Requirement:** Notwithstanding any other provision of this ordinance, if a building, structure or mobile home is found to be a dangerous building, the enforcing agency shall issue a notice that the building, structure or mobile home is a dangerous building.
- B. **Parties Entitled to Notice:** The notice shall be served on each owner of or party in interest of the building, structure or mobile home in whose name the property appears on the last local tax assessment records of the township.
- C. **Contents of Notice:** The notice shall specify the time and place of a hearing on whether the building, structure or mobile home is a dangerous building and state that the person to whom the notice is directed shall have

the opportunity at the hearing to show cause why the Hearing Officer should not order the building, structure or mobile home to be demolished, otherwise made safe or maintained.

- D. **Service of Notice:** The notice shall be in writing and shall be served upon the person to whom the notice is directed either personally or by certified mail, return receipt requested, addressed to the owner or party in interest at the address shown on the tax records. If a notice is served upon a person by certified mail, a copy of the notice shall also be posted upon a conspicuous part of the building or structure. The notice shall be served upon the owner or party in interest at least 10 days before the date of the hearing included in the notice.

IV. Dangerous Building Hearing Officer Duties Hearing; Order

- A. **Appointment of Hearing Officer:** The Hearing Officer shall be appointed by the Township Supervisor to serve at his or her pleasure. The Hearing Officer shall be a person who has expertise in housing matters, including, but not limited to, an engineer, architect, building contractor, inspector, or member of a community housing organization. An employee of the enforcing agency shall not be appointed as a Hearing Officer.
- B. **Filing Dangerous Building Notice with Hearing Officer:** The enforcing agency shall file a copy of the notice of the dangerous condition of any building with the Hearing Officer.
- C. **Hearing Testimony and Decision:** At a hearing prescribed by this ordinance, the Hearing Officer shall take testimony of the enforcing agency, the owner of the property, and any interested party. Not more than five days after completion of the hearing, the Hearing Officer shall render a decision either closing the proceedings or ordering the building, structure or mobile home demolished, otherwise made safe, or properly maintained.
- D. **Compliance with Hearing Officer Order:** If the Hearing Officer determines that the building, structure or mobile home should be demolished, otherwise made safe, or properly maintained, the Hearing Officer shall so order, fixing a time in the order for the owner, agent or lessee to comply with the order.
- E. **Noncompliance with Hearing Officer Order/Request to Enforce Order:** If the owner, agent or lessee fails to appear or neglects or refuses to comply with the order issued under Section III, D of this ordinance, the Hearing Officer shall file a report of the findings and a copy of the order with the Township Board not more than five days after noncompliance by the owner and request that necessary action be taken to enforce the order.

A copy of the findings and order of the Hearing Officer shall be served on the owner, agent or lessee in the manner prescribed in Section III of this ordinance.

V. Enforcement Hearing Before the Township Board

The Township Board shall fix a date not less than 60 days after the hearing prescribed in Section IV, C of this ordinance for a hearing on the findings and order of the Hearing Officer and shall give notice to the owner, agent or lessee in the manner prescribed in Section III of this ordinance of the time and place of the hearing. At the hearing, the owner, agent or lessee shall be given the opportunity to show why the order should not be enforced. The Township Board shall either approve, disapprove or modify the order. If the Township Board approves or modifies the order, the Township Board shall take all necessary action to enforce the order. If the order is approved or modified, the owner, agent or lessee shall comply with the order within 60 days after the date of hearing under this section. In the case of an order of demolition, if the Township Board determines that the building, structure or mobile home has been substantially destroyed by fire, wind, flood, deterioration, neglect, abandonment, vandalism, or other cause and the cost of repair of the building, structure or mobile home will be greater than the state equalized value of the building, structure or mobile home, the owner, agent or lessee shall comply with the order of demolition within 21 days after the date of the hearing under this section. If the estimated cost of repair exceeds the State Equalized Value of the building or structure to be repaired, a rebuttable presumption that the building or structure requires immediate demolition exists.

VI. Implementation and Enforcement of Remedies

- A. **Implementation of Order by Township:** In the event of failure or refusal of the owner or party in interest to comply with the decision of the Township Board, the Township Board may, in its discretion, contract for the demolition, making safe or maintaining the exterior of the building, structure or mobile home, or grounds adjoining the building, structure or mobile home to promote safety.
- B. **Reimbursement of Costs:** The cost of demolition includes, but is not limited to, fees paid to hearing officers, costs of title searches or commitments used to determine the parties in interest, recording fees for notices and liens filed with the county register of deeds, demolition and dumping charges, court reporter attendance fees, and costs of the collection of the charges authorized under this act. The costs of the demolition, of making the building safe, or of maintaining the exterior of the building, structure or mobile home or grounds adjoining the building, structure or mobile home, incurred by the Township to bring the property into conformance with this ordinance shall be reimbursed to the Township by the owner of party in interest in whose name the property appears.

- C. **Notice of Costs:** The owner or party in interest in whose name the property appears upon the last local tax assessment records shall be notified by the township assessor of the amount of the costs of the demolition, of making the building safe, or of maintaining the exterior of the building, structure or mobile, or grounds adjoining the building, structure or mobile home to promote safety, by first class mail at the address shown on the Township records.
- D. **Lien for Unpaid Costs:** If the owner or party in interest fails to pay the costs within 30 days after mailing by the assessor of the notice of the amount of the cost, the township shall have a lien for the costs incurred by the township to bring the property into conformance with this ordinance. The lien shall not take effect until notice of the lien has been filed or recorded as provided by law. A lien provided for in this subsection does not have priority over previously filed or recorded liens and encumbrances. The lien for the costs shall be collected and treated in the same manner as provided for property tax liens under the General Property Tax Act, Act No. 206 of the Public Acts of 1893, as amended, being Section 211.1 et. Seq. of the Michigan Compiled Laws.
- E. **Court Judgment for Unpaid Costs:** In addition to other remedies under this ordinance, the Township may bring an action against the owner of the building, structure or mobile home for the full cost of demolition, of making the building safe, or of maintaining the exterior of the building, structure or mobile home or grounds adjoining the building, structure or mobile home to promote safety. The Township shall have a lien on the property for the amount of a judgment obtained pursuant to this subsection. The lien provided for in this subsection shall not take effect until notice of the lien is filed and recorded as provided for by law. The lien does not have priority over prior filed or recorded liens and encumbrances.
- F. **Enforcement of Judgment:** A judgment in an action brought pursuant to Section VI, E, of this ordinance may be enforced against assets of the owner other than the building, structure or mobile home.
- G. **Lien for Judgment Amount:** The Township shall have a lien for the amount of a judgment obtained pursuant to Section VI, E, of this ordinance against the owner's interest in all real property located in this state that is owned in whole or in part by the owner of the building, structure or mobile home against which the judgment is obtained. A lien provided for in this subsection does not take effect until notice of the lien is filed or recorded as provided by law, and the lien does not have priority over prior filed or recorded liens and encumbrances.

VII. Sanction for Nonconformance with Order

Any person or other entity who fails or refuses to comply with an order approved or modified by the Township Board under Section V of the ordinance within the time prescribe by that Section is responsible for a municipal civil infraction as defined by Michigan law and subject to a civil fine of not more than \$500.00, plus costs, which may include all direct or indirect expenses to which the Township has been put in connection with the violation. A violator of this ordinance shall also be subject to such additional sanctions, remedies, and judicial orders as are authorized under Michigan law. Each day a violation of this ordinance continues to exist constitutes a separate violation.

VIII. Appeal of Township Board Decision

An owner aggrieved by any final decision or order of the Township Board, as applicable, under Section V of this ordinance may appeal the decision or order to the circuit court by filing a petition for an order of superintending control within 20 days from the date of the decision.

IX. Penalties and Civil Fines/Cost

Any person, firm or corporation found violating the provisions of this Ordinance, is responsible for a Municipal Civil Infraction as defined by Michigan law and subject to a civil fine determined in accordance with the following schedule: Each day that a violation shall continue, it constitutes a separate offense. The fine starts the day after the deadline date stated on the notice. Checks for fines shall be made payable to Middle Branch Township.

First Violation within a 3-year period*	\$50.00/per day
Second Violation within a 3-year period*	\$100.00/per day
Third Violation within a 3-year period*	\$200.00/per day
Fourth or subsequent violation within a 3-year period	\$400.00/per day

(*Determined on the basis of the date of the violation(s))

Additionally, the violator shall pay costs, which may include all direct or indirect expenses to which the township has been put in connection with the violation. In no case however, shall costs of less than \$9.00 or more than \$500.00 be ordered. A violator of this ordinance shall also be subject to such additional sanctions, remedies and judicial orders as are authorized under Michigan law.

Any violation of this ordinance shall also constitute a public nuisance, which may be abated by injunctive relief or any other remedy permitted by law.

X. Severability

The provisions of this ordinance are hereby declared to be severable and if any clause sentence, word, section or provision is hereafter declared void or unenforceable for any reason by any court of competent jurisdiction, it shall not affect the remainder of such ordinance which shall continue in full force and effect.

XI. Repeal

All ordinances or parts of ordinances in conflict herewith are hereby repealed, provided that this ordinance shall not be construed to repeal expressly or by implication any provision of an Applicable Building Code.

XII. Effective Date

This ordinance shall take effect 30 days after publication as required by law.



, Supervisor



PEGGY HOARD, Clerk

Battle Creek Code of Ordinances

CHAPTER 1454 Dangerous Buildings

- 1454.01 Definitions.
- 1454.02 General prohibition.
- 1454.03 Notices; Hearing Officer.
- 1454.04 Hearings.
- 1454.05 Judgments.
- 1454.06 Placarding and vacating; abatement of rent.
- 1454.99 Penalty.

CROSS REFERENCES

Indemnity agreements - see M.C.L.A. Sec. 125.406

Fee schedule for building inspection - see ADM. Ch. 246

Damaged buildings - see P. & Z. 1288.02

Demolition and moving of buildings - see B. & H. Ch. 1440

Condemnation of unfit dwellings, dwelling units, rooming houses and premises - see B. & H. 1460.14

Cost of demolition of dwellings - see B. & H. 1462.28

Power to raze buildings declared to be fire hazards - see F.P. 1620.20

1454.01 DEFINITIONS.

As used in this chapter:

- (a) "Act" means Act 167 of the Public Acts 1917, as amended, being the Housing Law of Michigan.
- (b) "Attractive nuisance" means a condition likely to attract curious children.
- (c) "Building code" means Single State Construction Code, as enforced by the City.

(d) "Dangerous building" means a building or structure that has one or more of the following defects or is in one or more of the following conditions:

(1) A door, aisle, passageway, stairway or other means of exit does not conform to the Fire Code as adopted at Chapter 1610 of these Codified Ordinances.

(2) A portion of the building or structure is damaged by fire, wind, flood or other cause so that the structural strength or stability of the building or structure is appreciably less than it was before the damage and does not meet the minimum requirements of the Act, the Building Code or the Housing Code of the City for a new building or structure, purpose or location.

(3) A part of the building or structure is likely to fall, become detached or dislodged, or collapse and injure persons or damage property.

(4) A portion of the building or structure has settled to an extent that walls or other structural portions of the building or structure have materially less resistance to wind than is required in the case of new construction by the Act, the Building Code or the Housing Code of the City.

(5) The building or structure, or a part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for support, or for other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fall or give way.

(6) The building, structure or a part of the building or structure is manifestly unsafe for the purpose for which it is used.

(7) The building or structure is damaged by fire, wind or flood, is dilapidated or deteriorated and becomes an attractive nuisance, becomes a harbor for vagrants, criminals, or enables persons to resort to the building or structure for committing a nuisance or an unlawful or immoral act.

(8) A building or structure used or intended to be used for dwelling purposes, including the adjoining grounds, because of dilapidation, decay, damage, faulty construction or arrangement, or for other reason, is unsanitary or unfit for human habitation, is in a condition that the County Health Officer determines is likely to cause sickness or disease, or is likely to injure the health, safety or general welfare of people living in the dwelling.

(9) A building or structure that is vacant, dilapidated or open at a door or window, leaving the interior of the building exposed to the elements or accessible to entrance by trespassers.

(10) A building or structure remains unoccupied for a period of 180 consecutive days or longer and is not listed as being available for sale, lease or rent with a real estate broker licensed under Article 25 of the State Occupational Code, Act 299 of the Public Acts of 1980, as amended. For purposes of this subdivision, "building or structure" includes, but is not limited to, a commercial building or structure. This subdivision does not apply to either of the following:

A. A building or structure as to which the owner or agent does both of the following:

1. Notifies the City Police Department that the building or structure will remain unoccupied for a period of 180 consecutive days. The notice shall be given to the Police Department by the owner or the owner's agent not more than thirty days after the building or structure becomes

unoccupied.

2. Maintains the exterior of the building or structure and adjoining grounds in accordance with the Act, the Building and the Housing Code of the City.

B. A secondary dwelling of the owner that is regularly unoccupied for a period of 180 days or longer each year, if the owner notifies the City Police Department that the dwelling will remain unoccupied for a period of 180 consecutive days or more each year. An owner who has given the notice prescribed by this subparagraph shall notify the Police Department not more than thirty days after the dwelling no longer qualifies for this exception. As used in this paragraph, "secondary dwelling" means a dwelling such as a vacation home, hunting cabin or summer home that is occupied by the owner or a member of the owner's family during part of a year.

(Ord. 11-93. Passed 7-13-93; Ord. 23-05. Passed 10-4-05.)

1454.02 GENERAL PROHIBITION.

It is unlawful for any owner or agent thereof to keep or maintain any dwelling or part thereof which is a dangerous building.

(Ord. 11-93. Passed 7-13-93; Ord. 23-05. Passed 10-4-05.)

1454.03 NOTICES; HEARING OFFICER.

(a) If a building or structure is found to be a dangerous building, the City shall issue a notice that the building or structure is a dangerous building under this chapter.

(b) The notice shall be served on the owner, agent or lessee that is registered with the City pursuant to Chapter 1460 of these Codified Ordinances. If an owner, agent or lessee is not registered, the notice shall be served on each owner or party in interest in the building or structure in whose name the property appears on the last City tax assessment records.

(c) The notice shall be in writing and shall be served upon the person to whom the notice is directed either personally or by certified mail, return receipt requested, addressed to the owner or party in interest at the address shown on the tax records. If a notice is served on a person by certified mail, a copy of the notice shall also be posted upon a conspicuous part of the building or structure. The notice shall be served upon the owner or party in interest at least ten days before the date of the hearing included in the notice.

(d) The notice shall specify the time and place of a hearing on whether the building or structure is a dangerous building. The person to whom the notice is directed shall have the opportunity to show cause at the hearing why the Hearing Officer should not order the building or structure to be demolished, otherwise made safe or properly maintained.

(e) The Hearing Officer shall be appointed by the Mayor to serve at his or her pleasure. The Hearing Officer shall be a person who has expertise in housing matters, including, but not limited to, an engineer, architect, building contractor, building inspector or member of a community housing organization. An employee of the City shall not be appointed as a Hearing Officer. The City shall file a

copy of the notice that the building or structure is a dangerous building with the Hearing Officer.

(Ord. 11-93. Passed 7-13-93; Ord. 23-05. Passed 10-4-05.)

1454.04 HEARINGS.

(a) At the hearing, the Hearing Officer shall take testimony of the City Inspectors, the owner of the property and any interested party. Not more than five days after completion of the hearing, the Hearing Officer shall render a decision either closing the proceedings or ordering the building or structure demolished, otherwise made safe or properly maintained.

(b) If the Hearing Officer determines that the building or structure should be demolished, otherwise made safe or properly maintained, the Hearing Officer shall so order, specifying the action the owner, agent, or lessee shall take and fixing a time by which the owner, agent or lessee shall comply with the order. If the building is a dangerous building under Section 1454.01(d)(10), the order may require the owner or agent to maintain the exterior of the building and adjoining grounds owned by the owner of the building, including, but not limited to, the maintenance of lawns, trees and shrubs.

(c) If the owner, agent or lessee fails to appear or neglects or refuses to comply with the order issued under subsection (b) hereof, the Hearing Officer shall file a report of the findings and a copy of the order with the Housing Board of Appeals not more than five days after the date for compliance set in the order and request that necessary action be taken to enforce the order. The Hearing Officer shall file the report of the findings and a copy of the order with the Housing Board of Appeals established pursuant to Chapter 1464 and request that necessary action be taken to enforce the order. A copy of the findings and order of the Hearing Officer shall be served on the owner, agent or lessee in the manner prescribed in Section 1454.03.

(d) The Housing Board of Appeals, shall fix a date not less than thirty days after the hearing before the Hearing Officer for a hearing on the findings and order of the Hearing Officer, and shall give notice to the owner, agent or lessee in the manner prescribed in Section 1454.03 of the time and place of the hearing. At the hearing before the Housing Board of Appeals, the owner, agent or lessee shall be given the opportunity to show cause why the order should not be enforced.

(e) The Housing Board of Appeals shall either approve, disapprove or modify the order of the Hearing Officer. If the Housing Board of Appeals approves or modifies the order, the City shall take all necessary action to enforce the order. If the order is approved or modified, the owner, agent or lessee shall comply with the order within sixty days after the date of the hearing under this subsection. In the case of an order of demolition, if the Housing Board of Appeals determines that the building or structure has been substantially destroyed by fire, wind, flood, deterioration, neglect, abandonment, vandalism or other cause and the cost of repair of the building or structure will be greater than the State-equalized value of the building or structure, the owner, agent or lessee shall comply with the order of demolition within twenty-one days after the date of the hearing under this section. If the estimated cost of repair exceeds the State equalized value of the building or structure to be repaired, a rebuttable presumption that the building or structure requires immediate demolition exists.

(f) The cost of the demolition, of making the building safe, or of maintaining the exterior of the building or structure or grounds adjoining the building or structure, incurred by the City to bring the property into conformance with this chapter, shall be reimbursed to the City by the owner or party in interest in whose name the property appears. The cost of demolition, making the building safe, or of

maintaining the exterior of the building or structure and grounds adjoining the building or structure includes but is not limited to, fees paid to hearing officers, costs of title searches or commitments used to determine the parties in interest, recording fees for notices and liens filed with the County Register of Deeds, demolition and dumping charges, court reporter attendance fees, and costs of the collection of the charges authorized under this chapter, including but not limited to the costs of placarding and vacating a dangerous building.

(g) The owner or party in interest in whose name the property appears upon the last local tax assessment records shall be notified by the City Assessor of the cost of the demolition, of making the building safe or of maintaining the exterior of the building or structure or grounds adjoining the building or structure, by first-class mail at the address shown on the records. If the owner or party in interest fails to pay the cost within thirty days after mailing by the City Assessor of the notice of the amount of the cost, the City shall have a lien for the cost incurred by the City to bring the property into conformance with this chapter. The lien shall not take effect until notice of the lien has been filed or recorded as provided by law. A lien provided for in this subsection does not have priority over previously filed or recorded liens and encumbrances. The lien for the cost shall be collected and treated in the same manner as provided for property tax liens under the General Property Tax Act, being Act 206 of the Public Acts of 1893, as amended.

(h) In addition to other remedies prescribed in this chapter, the City may bring an action against the owner of the building or structure for the full cost of the demolition, of making the building safe or of maintaining the exterior of the building or structure or grounds adjoining the building or structure. The City shall have a lien on the property for the amount of a judgment obtained pursuant to this subsection. The lien provided for in this subsection shall not take effect until notice of the lien is filed or recorded as provided by law. The lien does not have priority over previously filed or recorded liens and encumbrances.

(Ord. 16-94. Passed 12-20-94; Ord. 23-05. Passed 10-4-05.)

1454.05 JUDGMENTS.

(a) A judgment in an action brought pursuant to Section 1454.04(h) may be enforced against assets of the owner other than the building or structure.

(b) The City shall have a lien for the amount of a judgment obtained pursuant to Section 1454.04 (h) against the owner's interest in all real property located in this State that is owned in whole or in part by the owner of the building or structure against whom the judgment is obtained. A lien provided for in this section does not take effect until notice of the lien is filed or recorded as provided by law, and the lien does not have priority over prior filed or recorded liens and encumbrances.

(Ord. 11-93. Passed 7-13-93; Ord. 23-05. Passed 10-4-05.)

1454.06 PLACARDING AND VACATING; ABATEMENT OF RENT.

(a) If the Hearing Officer or Housing Board of Appeals determines that a building is a dangerous building and that it should be razed or repaired, the City Building Official shall post, in a conspicuous place on the dangerous building, a placard describing the ordered action. No person, other than the City Building Official, shall deface or remove said placard.

(b) A dangerous building which has been placarded under this section shall be vacated by all occupants within a reasonable time, as required by the City Building Official. No owner or operator shall let to any person for human occupancy and no person shall occupy nor permit anyone to occupy such dangerous building which has been placarded by the building official after the date on which the City Building Official has required such building to be vacated, until written approval is secured from, and such placard is removed by, the City Building Official. The City Building Official shall remove such placard upon the repair of the dangerous conditions.

(c) If, pursuant to the provisions of this section, a dangerous building has been ordered vacated by the Building Official and there is no compliance with the order in the time specified, the Building Official may petition the appropriate court to obtain compliance, and the court may order the occupants to vacate the dangerous building forthwith.

(d) If any dangerous building is occupied after it has been ordered vacated under this section, no rent shall be recoverable for the period of occupancy.

(Ord. 23-05. Passed 10-4-05.)

1454.99 PENALTY.

(a) A person who fails or refuses to comply with an order approved or modified by the Board of Appeals under Section 1454.04 within the time prescribed by that section is guilty of a misdemeanor, punishable by imprisonment for not more than 120 days or a fine of not more than one thousand dollars (\$1,000) or both.

(b) A person who occupies a dangerous building or permits a dangerous building of which they are an owner or agent to be occupied, is guilty of a misdemeanor punishable by imprisonment for ninety days or a fine of five hundred dollars (\$500) or both.

(c) A person, other than a City Building Official, who defaces or removes a dangerous building placard is guilty of a misdemeanor punishable by imprisonment for forty-five days or a fine of two hundred fifty dollars (\$250) or both.

(Ord. 11-93. Passed 7-13-93; Ord. 23-05. Passed 10-4-05.)

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Ordinances

THE TOWNSHIP OF ESCANABA COUNTY OF DELTA, STATE OF MICHIGAN DANGEROUS BUILDING ORDINANCE ORDINANCE NO. 8-05

DANGEROUS BUILDING ORDINANCE

An ordinance to promote health, safety and welfare of the people of Escanaba Township, Delta County, Michigan by regulating the maintenance and safety of certain buildings and structures; to define the classes of buildings and structures affected by the ordinance; to establish administrative requirements and procedures for the maintenance or demolition of certain buildings and structures; establish remedies, provide for enforcement, and fix penalties for the violation of this ordinance; and to repeal all ordinance or part of ordinances in conflict therewith.

SECTION 1: TITLE

This ordinance shall be known and cited as the Escanaba Township Dangerous Building Ordinance.

SECTION II: DEFINITION OF TERMS

A. "Dangerous building" means any building or structure residential or structure, residential or otherwise, that has one or more of the following defects or is in one or more of the following conditions:

1. A door, aisle, passageway, stairway or other means of exits that does not conform to the Michigan Building Code for Exiting Structure. (Ch. 34)

2. A portion of the building or structure is damaged by fire, wind, flood, or other cause so that the structural strength or stability of the building is appreciably less than it was before the catastrophe and does not meet the minimum requirements of the Housing Law of the State of Michigan, Act No. 167 of the Public Acts of 1917, as amended being Section 125.401 et seq. of the Michigan Compiled Laws, or the Township Building Code for a new building of structure, purpose or location.

3. A part of the building or structure is likely to fall, becoming detached or dislodged, or collapse, and injure persons or damage property.

4. A portion of the building or structure has settled to such an extent that walls or other structural portions of the building or structure have materially less resistance to wind than is required in the case of new construction by the Housing Law of the State of Michigan, Act No. 167 of the Public Acts of 1917, as amended being Section 125.401 et seq. of the Michigan Compiled Laws.

5. The building or structure, or part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, or the removal or movement of some portion of the ground necessary for the support, or other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of

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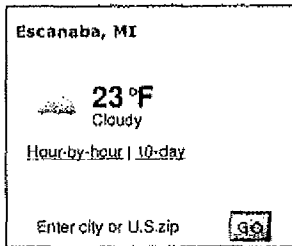
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the building or structure is likely to fail or give way.

6. The building or structure, or part of the building or structure, is manifestly unsafe for the purpose for which it is used.

7. The building or structure is damaged by fire, wind, or flood, or is dilapidated or deteriorated and becomes an attractive nuisance to children who might play in the building or structure to their danger, or becomes a harbor for vagrants, criminals, or immoral persons, or enables persons to resort to the building or structure for committing nuisance or unlawful or immoral act. The building becomes an attractive nuisance from an infestation of animals, rodents, or insects.

8. A building or structure used or intended to be used for dwelling purposes, including the adjoining grounds, because of dilapidation, decay, damage, faulty construction, or arrangement, or otherwise, is unsanitary or unfit for human habitation, is in a condition that the health officer of the county determines is likely to cause sickness or disease, or is likely to injure the health, safety or general welfare of people living in the dwelling.

9. A building or structure is vacant, dilapidated and open at door or window, leaving the interior of the building exposed to the elements or accessible to entrance by trespassers.

10. A building or structure remains unoccupied for a period of 180 consecutive days or longer, and is not listed as being available for sale, lease or rent with real estate broker licensed under Article 25 of the Occupation Code, No. 299 of the Public Acts of 1980, being Section 339.2501 et seq. of the Michigan Compiled Laws, or is not publicly offered for sale by owner. This subdivision does not apply to either of the following.

a. A building or structure as to which the owner or agent does both of the following.

1. Notifies the Township Zoning Administrator that the building or structure will remain unoccupied for a period of more than 30 days after the building or structure becomes occupied.

2. Maintains the exterior of the building or structure and adjoining grounds in accordance with this ordinance and the Housing Law of the State of Michigan, Act No. 167 of the Public Acts of 1917, as amended, being Section 125.401 et seq. of the Michigan Compiled Laws, or the Township Building Code.

b. A secondary dwelling of the owner that is regularly unoccupied for a period of 180 days or longer each year, if the owner notifies the Zoning Administrator of the Township that the dwelling will remain unoccupied for a period of 180 consecutive days or more each year. An owner who has given the notice prescribed by this subparagraph shall notify the Township Zoning Administrator not more than 30 days after the dwelling no longer qualifies for this exception. As used in this subparagraph, "secondary dwelling" means a dwelling such as a vacation home, hunting cabin or summer home that is occupied by the owner or member of the owner's family during part of the year.

B. Enforcing Agency means the township, though the Township Zoning Administration and/or such other official(s) or agency as may be designated by the Township Board to enforce this ordinance.

C. Township Building Code means the building code administered and enforced in the township pursuant to the State Construction Code Commission Act, Act No. 230 of the Public Acts of 1972, as amended, being Section 125.1501 et seq. of the Michigan Compiled Laws.

SECTION III: PROHIBITION OF DANGEROUS BUILDINGS

It shall be unlawful for any owner or agent thereof to keep or maintain any building or part thereof that is a dangerous building as defined in this ordinance.

SECTION IV: NOTICE OF DANGEROUS BUILDING; HEARING

A. Notice requirement. Notwithstanding any other provision of this ordinance, if a building or structure is found to be a dangerous building, the enforcing agency shall issue a notice that the building or structure is a dangerous building.

B. Parties Entitled to Notice. The notice shall be served on each owner of or party in interest in the building or structure in whose name the property appears on the last local tax assessment records of the township.

C. Contents of Notice. The notice shall specify the time and place of a hearing on whether the building or structure is a dangerous building and state that the person to whom the notice is directed shall have the opportunity at the hearing to show cause why the enforcing officer should not order the building or structure to be demolished, otherwise made safe, or properly maintained.

D. Service of Notice. The notice shall be in writing and served upon the person to whom the notice is directed either personally or by certified mail, return receipt requested, addressed to the owner or party in interest at the address shown on the tax records. If notice shall be served upon a person by certified mail, a copy of the notice shall be posted upon conspicuous part of the building or structure. The notice shall be served upon the owner or party in interest at least 10 days before the date of the hearing included in the notice.

SECTION V: DANGEROUS BUILDING ENFORCING OFFICER; DUTIES; HEARING; ORDER

A. Appointment of Enforcing Officer- The Enforcing Officer shall be appointed by the Township Supervisor to serve at his or her pleasure. The Enforcing Officer shall be a person who has expertise in housing matters, including, but not limited to, an architect, building contractor, building inspector, or member of a community housing organization.

B. Filing Dangerous Building Ordinance with Enforcing Officer- The Enforcing Officer shall file a copy of the notice of the dangerous condition of any building with the Planning Commission officers.

C. Hearing Testimony and Decision- At a Hearing prescribed by this ordinance, the Planning Commission shall take testimony of the Enforcing Officer, the owner of the property, and any interested party. Not more than five days after the completion of the hearing, the Planning Commission shall render a decision either closing the proceedings or ordering the building or structure demolished, otherwise made safe, or properly maintained.

D. Compliance with Planning Commission's Order- If the Hearing Officer determines that the building or structure should be demolished, otherwise made safe, or property maintained, the Planning Commission shall order, fixing a time in the order for the owner, agent or lessee to comply with the order. If the building is a dangerous building under Section II.A.10 of this ordinance, the order may require the owner or agent to maintain the exterior of the building and adjoining grounds owned by the owner of the building including, but not limited to, the maintenance of lawns, trees, and shrubs.

E. Noncompliance with Planning Commission's Order/Request to Enforce Order- If the owner, agent or lessee fails to appear or neglects or refuses to comply with the order issued under Section V. D. of this ordinance, the Planning Commission shall file a report of the findings and a copy of the order with the Township Board not more than five days after noncompliance by the owner and request that necessary action be taken to enforce the order.

SECTION VI: ENFORCEMENT HEARING BEFORE THE TOWNSHIP BOARD

The Township board shall fix a date not less than 30 days after the hearing prescribed in Section V. C. of this ordinance for a hearing on the findings and order the Planning Commission and shall give notice to the owner, agent or lessee in the manner prescribed in Section VI. D. of this ordinance of the time and place of the hearing. At the hearing, the owner, agent or lessee shall be given the opportunity to show cause why the order should not be enforced. If the order is approved or modified, the owner, agent or lessee shall comply with the order within 60 days after the date of this hearing under this section. In the case of demolition, if the Township Board determines that the building or structure has been substantially destroyed by fire, wind, flood or other natural disaster and the cost of repair of the building or structure will be greater than the state equalized value of the building or structure, the owner, agent or lessee shall comply with the order of demolition within 21 days after the

date of the hearing under this section.

SECTION VII: IMPLEMENTATION AND ENFORCEMENT OF REMEDIES

A. Implementation of Order by Township. In the event of the failure or refusal of the owner or party in interest to comply with the decision of the Township Board, the Township Board may, in its discretion, contract for the demolition, making safe or maintaining the exterior of the building or structure or grounds adjoining the building or structure.

B. Reimbursement of Cost. The cost of the demolition, of making the building safe, or of maintaining the exterior of the building or structure or grounds adjoining the building or structure, incurred by the Township to bring the property into conformation with this ordinance shall be reimbursed to the Township by the owner or party in interest in whose name the property appears.

C. Notice of Cost. The owner or party in interest in whose name the property appears upon the last local tax assessment records shall be notified by the township assessor of the amount of the costs of the demolition, of making the building safe, or of maintaining the exterior of the building or structure or grounds adjoining the building or structure, by first class mail at the address shown on the township records.

D. Lien for Unpaid Cost. Of the owner or party in interest fails to pay the costs within 30 days after the mailing by the assessor of the notice of the amount of the cost, in the case of a single family dwelling or a two family dwelling, the township shall have a lien for the cost incurred by the township to bring the property into conformance with this ordinance. The lien shall not take effect until notice of the lien has been filed or recorded as provided by law. Alien provided for in this subsection does not have priority over previously filed or recorded liens and encumbrances. The lien for the costs shall be collected and treated in the same manner as provided for property tax liens under the General Property Tax Act, Act No. 206 of the Public Acts of 1893, as amended, being Section211.1 et seq. of the Michigan Compiled Laws.

E. Court Judgment for Unpaid Costs. In addition to other remedies under this ordinance, the Township may bring action against the owner of the building or structure for the full cost of the demolition, of making the building safe, or of maintaining the exterior of the building or structure or grounds adjoining the building or structure. In the case of a single family dwelling or a two family dwelling, the township shall have a lien on the property for the amount of a judgment obtained pursuant to this subsection. The lien is filed and recorded as provided for by the law. The lien does not have priority over the prior filed or recorded liens and encumbrances.

F. Enforcement of Judgment. A judgment in an action brought pursuant to section VII.E of this ordinance may be enforced against the assets of the owner other than the building or structure.

F. Lien for Judgment Amount. In the case of a single family dwelling or a two family dwelling the Township shall have a lien for the amount of a judgment obtained pursuant to Section VII.E of this ordinance against the owner's interest in all real property located in this state that is owned in whole or in part by the owner of the building or structure against which the judgment is obtained. A lien provided for in this subsection does not take effect until notice of the lien is filed or recorded as provided by law, and the lien does not have priority over prior filed or recorded liens and encumbrances.

SECTION VIII: SANCTION FOR NONCONFORMATION WITH ORDER

Any person or other entity who fails or refuses to comply with an order approved or modified by the Township Board under Section VI. Of this ordinance within the time prescribed by that Section irresponsible for a municipal civil infraction as defined by Michigan Law and subject to a civil fine of not more than \$500.00, plus cost, which may include all direct or indirect expenses to which the Township has been put in connection with the violation. A violator of this ordinance shall also be subject to such additional sanctions, remedies, and judicial orders as are authorized under Michigan Law. Each day a violation of this ordinance continues to exist constitutes a separate violation.

SECTION IX: APPEAL OF TOWNSHIP BOARD DECISION

An owner aggrieved by any final decision or order of the Township Board, as applicable under Section VI of this ordinance may appeal the decision order to the circuit court by filing a petition for an order of superintending control within 20 days from the date of the decision.

SECTION X: SEVERABILITY

The provisions of this ordinance are hereby declared severable and if any clause, sentence, word, section or provision is hereafter declared void or unenforceable for any reason by any court of competent jurisdiction, it shall not affect the remainder of such ordinance, which shall continue in full force and effect.

SECTION XI: REPEAL

All ordinances or parts of ordinances in conflict herewith are hereby repealed; provided that this ordinance shall not be construed to repeal expressly or by implication any provision of the Township Building Code.

SECTION XII: EFFECTIVE DATE

This ordinance shall take effect 30 days after publication as required by law. Published, August 16, 2005. This ordinance is in effect, September 16, 2005.

Kevin Dubord
Escanaba Township Supervisor

Patricia J. Beauchamp
Escanaba Township Clerk

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GRASS LAKE CHARTER TOWNSHIP
POLICE POWER ORDINANCE

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DANGEROUS BUILDINGS ORDINANCE:						Length: 6 Pages			
Reviewed									
Revised	* 7/09	6/14/2011							

*denotes date of origin

An ordinance to promote the health, safety and welfare of the people of Grass Lake Charter Township, Jackson County, Michigan, by regulating the maintenance and safety of certain buildings and structures; to define the classes of buildings and structures affected by the ordinance; to establish administrative requirements and prescribe procedures for the maintenance or demolition of certain buildings and structures; to establish remedies, provide for enforcement, and fix penalties for the violation of this ordinance; and to repeal all ordinances or parts of ordinances in conflict therewith.

THE TOWNSHIP OF Grass Lake, Jackson COUNTY, MICHIGAN, ORDAINS:

Section I: Title

This ordinance shall be known and cited as the Grass Lake Charter Township Dangerous Buildings Ordinance.

Section II: Definition of Terms

As used in this ordinance, including in this section, the following words and terms shall have the meanings stated herein:

A. "Dangerous building" means any building or structure, residential or otherwise, that has one or more of the following defects or is in one or more of the following conditions:

1. A door, aisle, passageway, stairway or other means of exit does not conform to the Township Fire Code or Township Building Code.
2. A portion of the building or structure is damaged by fire, wind, flood or other cause so that the structural strength or stability of the building or structure is appreciably less than it was before the catastrophe and does not meet the minimum requirements of the Housing Law of Michigan, Public Act 167 of 1917, as amended, (MCL 125.401, *et seq.*), or the Township Building Code for a new building or structure, purpose or location.
3. A part of the building or structure is likely to fall, become detached or dislodged, or collapse, and injure persons or damage property.
4. A portion of the building or structure has settled to such an extent that walls or other structural portions of the building or structure have materially less resistance to wind than is required in the case of new construction by the Housing Law of Michigan, Public Act 167 of 1917, as amended, (MCL 125.401, *et seq.*), or the Township Building Code.
5. The building or structure, or a part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, or the removal or movement of some portion of the ground necessary for the support, or for other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fall or give way.
6. The building or structure, or a part of the building or structure, is manifestly unsafe for the purpose for which it is used.
7. The building or structure is damaged by fire, wind or flood, or is dilapidated or deteriorated and becomes an attractive nuisance to children who might play in the building or structure to their danger, or becomes a harbor for vagrants, criminals or immoral persons, or enables

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persons to resort to the building or structure for committing a nuisance or an unlawful or immoral act.

8. A building or structure used or intended to be used for dwelling purposes, including the adjoining grounds, because of dilapidation, decay, damage, faulty construction or arrangement, or otherwise, is unsanitary or unfit for human habitation, is in a condition that the health officer of the township or county determines is likely to cause sickness or disease, or is likely to injure the health, safety or general welfare of people living in the dwelling.

9. A building or structure is vacant, dilapidated and open at door or window, leaving the interior of the building exposed to the elements or accessible to entrance by trespassers.

10. A building or structure remains unoccupied for a period of 180 consecutive days or longer, and is not listed as being available for sale, lease or rent with a real estate broker licensed under Article 25 of the Occupational Code, Public Act 299 of 1980, (MCL 339.2501, *et seq.*), or is not publicly offered for sale by the owner. This subdivision does not apply to either of the following:

a. A building or structure as to which the owner or agent does both of the following:

(1) Notifies the County Sheriff's Department that the building or structure will remain unoccupied for a period of 180 consecutive days. The notice shall be given by the owner or agent not more than 30 days after the building or structure becomes unoccupied.

(2) Maintains the exterior of the building or structure and adjoining grounds in accordance with this ordinance and the Housing Law of Michigan, Public Act 167 1917, as amended, (MCL 125.401, *et seq.*), or the Township Building Code.

b. A secondary dwelling of the owner that is regularly unoccupied for a period of 180 days or longer each year, if the owner notifies the County Sheriff's Department that the dwelling will remain unoccupied for a period of 180 consecutive days or more each year. An owner who has given the notice prescribed by this subparagraph shall notify the County Sheriff's Department not more than 30 days after the dwelling no longer qualifies for this exception. As used in this subparagraph, "secondary dwelling" means a dwelling such as a vacation home, hunting cabin or summer home, that is occupied by the owner or a member of the owner's family during part of year.

B. "Enforcing agency" means this township, through the Township Building Official and/or such other official(s) or agency as may be designated by the Township Board to enforce this ordinance.

C. "Township Building Code" means the building code administered and enforced in the township pursuant to the Stille-DeRossett-Hale Single State Construction Code Act, Public Act 230 of 1972, as amended, (MCL 125.1501, *et seq.*).

Section III: Prohibition of Dangerous Buildings

It shall be unlawful for any owner or agent thereof to keep or maintain any building or part thereof which is a dangerous building as defined in this ordinance.

Section IV: Notice of Dangerous Building; Hearing

A. Notice Requirement. Notwithstanding any other provision of this ordinance, if a building or structure is found to be a dangerous building, the enforcing agency shall issue a notice that the building or structure is a dangerous building.

B. Parties Entitled to Notice. The notice shall be served on each owner of or party in interest in the building or structure in whose name the property appears on the last local tax assessment records of the township.

C. Contents of Notice. The notice shall specify the time and place of a hearing on whether

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the building or structure is a dangerous building and state that the person to whom the notice is directed shall have the opportunity at the hearing to show cause why the Hearing Officer should not order the building or structure to be made safe, properly maintained or demolished.

D. Service of Notice. The notice shall be in writing and shall be served upon the person to whom the notice is directed either personally or by certified mail, return receipt requested, addressed to the owner or party in interest at the address shown on the tax records. If a notice is served upon a person by certified mail, a copy of the notice shall also be posted upon a conspicuous part of the building or structure. The notice shall be served upon the owner or party in interest at least 10 days before the date of the hearing included in the notice.

Section V: Dangerous Building Hearing Officer; Duties; Hearing; Order

A. Appointment of Hearing Officer. The Hearing Officer shall be appointed by the Township Supervisor to serve at his or her pleasure. The Hearing Officer shall be a person who has expertise in housing matters, including, but not limited to, an engineer, architect, building contractor, building inspector, or member of a community housing organization. An employee of the enforcing agency shall not be appointed as a Hearing Officer.

B. Filing Dangerous Building Notice with Hearing Officer. The enforcing agency shall file a copy of the notice of the dangerous condition of any building with the Hearing Officer.

C. Hearing Testimony and Decision. At a hearing prescribed by this ordinance, the Hearing Officer shall take testimony of the enforcing agency, the owner of the property, and any interested party. Not more than five days after completion of the hearing, the Hearing Officer shall render a decision either closing the proceedings or ordering the building or structure to be made safe, properly maintained, or demolished.

D. Compliance with Hearing Officer Order. If the Hearing Officer determines that the building or structure should be demolished, otherwise made safe, or properly maintained, the Hearing Officer shall so order, fixing a time in the order for the owner, agent or lessee to comply with the order. If the building is a dangerous building under Section II.A.10. of this ordinance, the order may require the owner or agent to maintain the exterior of the building and adjoining grounds owned by the owner of the building including, but not limited to, the maintenance of lawns, trees and shrubs.

E. Noncompliance with Hearing Officer Order/Request to Enforce Order. If the owner, agent or lessee fails to appear or neglects or refuses to comply with the order issued under Section V.D. of this ordinance, the Hearing Officer shall file a report of the findings and a copy of the order with the Township Board not more than five days after noncompliance by the owner and request that necessary action be taken to enforce the order. If the Township Board has established a Dangerous Building Board of Appeals pursuant to Section IX of this ordinance, the Hearing Officer shall file the report of the findings and a copy of the order with the Board of Appeals and request that necessary action be taken to enforce the order. A copy of the findings and order of the Hearing Officer shall be served on the owner, agent or lessee in the manner prescribed in Section IV.D. of this ordinance.

Section VI: Enforcement Hearing Before the Township Board or Dangerous Building Board of Appeals

The Township Board, or the Dangerous Building Board of Appeals, as applicable, shall fix a date not less than 30 days after the hearing prescribed in Section V.C. of this ordinance for a hearing on the findings and order of the Hearing Officer and shall give notice to the owner, agent or lessee in the manner prescribed in Section IV.D. of this ordinance of the time and place of the hearing. At the hearing, the owner, agent or lessee shall be given the opportunity to show cause why the order should not be enforced. The Township Board or the Board of Appeals shall either approve, disapprove or modify the order. If the Township Board or the Board of Appeals approves or modifies the order, the Township Board shall take all necessary action to enforce the order. If the order is approved or modified, the owner, agent or lessee shall comply with the order within 60 days after the date of the hearing under this section. In

the case of an order of demolition, if the Township Board or the Board of Appeals determines that the building or structure has been substantially destroyed by fire, wind, flood or other natural disaster and the cost of repair of the building or structure will be greater than the state equalized value of the building or structure, the owner, agent or lessee shall comply with the order of demolition within 21 days after the date of the hearing under this section.

Section VII: Implementation and Enforcement of Remedies

A. Implementation of Order by Township. In the event of the failure or refusal of the owner or party in interest to comply with the decision of the Township Board, or the Board of Appeals, as applicable, the Township Board may, in its discretion, contract for the demolition, making safe or maintaining the exterior of the building or structure or grounds adjoining the building or structure.

B. Reimbursement of Costs. The costs of the demolition, of making the building safe, or of maintaining the exterior of the building or structure or grounds adjoining the building or structure, incurred by the Township to bring the property into conformance with this ordinance shall be reimbursed to the Township by the owner or party in interest in whose name the property appears.

C. Notice of Costs. The owner or party in interest in whose name the property appears upon the last local tax assessment records shall be notified by the township assessor of the amount of the costs of the demolition, of making the building safe, or of maintaining the exterior of the building or structure or grounds adjoining the building or structure, by first class mail at the address shown on the Township records.

D. Lien for Unpaid Costs. If the owner or party in interest fails to pay the costs within 30 days after mailing by the assessor of the notice of the amount of the cost, in the case of a single-family dwelling or a two-family dwelling, the Township shall have a lien for the costs incurred by the Township to bring the property into conformance with this ordinance. The lien shall not take effect until notice of the lien has been filed or recorded as provided by law. A lien provided for in this subsection does not have priority over previously filed or recorded liens and encumbrances. The lien for the costs shall be collected and treated in the same manner as provided for property tax liens under the General Property Tax Act, Public Act 206 of 1893, as amended, (MCL 211.1, *et seq.*).

E. Court Judgment for Unpaid Costs. In addition to other remedies under this ordinance, the Township may bring an action against the owner of the building or structure for the full cost of the demolition, of making the building safe, or of maintaining the exterior of the building or structure or grounds adjoining the building or structure. In the case of a single-family dwelling or a two-family dwelling, the township shall have a lien on the property for the amount of a judgment obtained pursuant to this subsection. The lien provided for in this subsection shall not take effect until notice of the lien is filed and recorded as provided for by law. The lien does not have priority over prior filed or recorded liens and encumbrances.

F. Enforcement of Judgment. A judgment in an action brought pursuant to Section VII.E. of this ordinance may be enforced against assets of the owner other than the building or structure.

G. Lien for Judgment Amount. In the case of a single-family dwelling or a two-family dwelling the Township shall have a lien for the amount of a judgment obtained pursuant to Section VII.E. of this ordinance against the owner's interest in all real property located in this state that is owned in whole or in part by the owner of the building or structure against which the judgment is obtained. A lien provided for in this subsection does not take effect until notice of the lien is filed or recorded as provided by law, and the lien does not have priority over prior filed or recorded liens and encumbrances.

Section VIII: Sanction for Nonconformance with Order

Any person or other entity who fails or refuses to comply with an order approved or modified by the Township Board, or Board of Appeals, as applicable, under Section VI of this ordinance

within the time prescribed by that Section is responsible for a municipal civil infraction as defined by Michigan law and subject to a civil fine of not more than \$500.00, plus costs, which may include all direct or indirect expenses to which the Township has been put in connection with the violation. A violator of this ordinance shall also be subject to such additional sanctions, remedies, and judicial orders as are authorized under Michigan law. Each day a violation of this ordinance continues to exist constitutes a separate violation.

Section IX: Dangerous Building Board of Appeals

A. Establishment and Duties. The Township Board may establish a Dangerous Building Board of Appeals to hear all of the cases and carry out all of the duties of the Township Board described in Section VI of this ordinance. If the Township Board establishes a Board of Appeals, the establishment and operation of the Board of Appeals shall be controlled by the following provisions of this section.

B. Membership. The Board of Appeals shall be appointed by the Township Board and shall consist of the following members:

1. A building contractor;
2. A registered architect or engineer;
3. Two members of the general public;
4. An individual registered as a building official, plan reviewer or inspector under the Building Officials and Inspectors Registration Act, Public Act 54 of 1986, (MCL 338.2301, *et seq.*). The individual may be an employee of the enforcing agency.

C. Terms. Board of Appeals members shall be appointed for three years, except that of the members first appointed, two members shall serve for one year, two members shall serve for two years, and one member shall serve for three years. A vacancy created other than by expiration of a term shall be filled for the balance of the unexpired term in the same manner as the original appointment. A member may be reappointed for additional terms.

D. Officers. The Board of Appeals annually shall select a chairperson, vice chairperson and other officers that the Board of Appeals considers necessary.

E. Quorum and Final Action Votes. A majority of the Board of Appeals members appointed and serving constitutes a quorum. Final action of the Board of Appeals shall be only by affirmative vote of a majority of the board members appointed and serving.

F. Compensation and Expenses. The Township Board shall fix the amount of any per diem compensation provided to the members of the Board of Appeals. Expenses of the Board of Appeals incurred in the performance of official duties may be reimbursed as provided by law for employees of the Township Board.

G. Open Meetings Act Applicable. A meeting of the Board of Appeals shall be held pursuant to the Open Meetings Act, Public Act 267 of 1976, as amended, (MCL 15.261, *et seq.*). Public notice of the time, date and place of the meeting shall be given in the manner required by the Open Meetings Act.

H. Freedom of Information Act Applicable. A writing prepared, owned, used, in the possession of, or retained by the Board of Appeals in the performance of an official function shall be made available to the public pursuant to the Freedom of Information Act, Public Act 442 of 1976, as amended, (MCL 15.231, *et seq.*).

Section X: Appeal of Township Board/Board of Appeals Decision

An owner aggrieved by any final decision or order of the Township Board, or the Board of Appeals, as applicable, under Section VI of this ordinance may appeal the decision or order to the circuit court by filing a petition for an order of superintending control within 20 days from

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the date of the decision.

Section XI: Severability

The provisions of this ordinance are hereby declared to be severable and if any clause, sentence, word, section or provision is hereafter declared void or unenforceable for any reason by any court of competent jurisdiction, it shall not affect the remainder of such ordinance which shall continue in full force and effect.

Section XII: Repeal

All ordinances or parts of ordinances in conflict herewith are hereby repealed; provided that this ordinance shall not be construed to repeal expressly or by implication any provision of the Township Building Code.

Section XIII: Effective Date

This ordinance shall take effect 30 days after publication as required by law.

Marjorie A. Clark
Grass Lake Charter Township, Clerk